

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 185

HOUSE BILL 2306

AN ACT

AMENDING SECTION 23-1021, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1021, Arizona Revised Statutes, is amended to
3 read:

4 23-1021. Right of employee to compensation; definitions

5 A. Every employee coming within the provisions of this chapter who is
6 injured, and the dependents of every such employee who is killed by accident
7 arising out of and in the course of his employment, wherever the injury
8 occurred, unless the injury was purposely self-inflicted, shall be entitled
9 to receive and shall be paid such compensation for loss sustained on account
10 of the injury or death, such medical, nurse and hospital services and
11 medicines, and such amount of funeral expenses in the event of death, as are
12 provided by this chapter.

13 B. Every employee who is covered by insurance in the state
14 compensation fund and who is injured by accident arising out of and in the
15 course of employment, and the dependents of every such employee who is
16 killed, provided the injury was not purposely self-inflicted, shall be paid
17 such compensation from the state compensation fund for loss sustained on
18 account of the injury and shall receive such medical, nurse and hospital
19 services and medicines, and such amount of funeral expenses in event of
20 death, as provided in this chapter.

21 C. An employee's injury or death shall not be considered a personal
22 injury by accident arising out of and in the course of employment and is not
23 compensable pursuant to this chapter if the impairment of the employee is due
24 to the employee's use of alcohol or the unlawful use of any controlled
25 substance proscribed by title 13, chapter 34 and is a substantial
26 contributing cause of the employee's personal injury or death. This
27 subsection does not apply if the employer had actual knowledge of and
28 permitted, or condoned, the employee's use of alcohol or the unlawful use of
29 the controlled substance proscribed by title 13, chapter 34.

30 D. Notwithstanding subsection C of this section, if the employer has
31 established a policy of drug testing or alcohol impairment testing in
32 accordance with chapter 2, article 14 of this title, is maintaining that
33 policy on an ongoing manner and, before the date of the employee's injury,
34 the employer files the written certification with the industrial commission
35 as required by subsection F of this section, an employee's injury or death
36 shall not be considered a personal injury by accident arising out of and in
37 the course of employment and is not compensable pursuant to this chapter, if
38 the employee of such an employer fails to pass, refuses to cooperate with or
39 refuses to take a drug test for the unlawful use of any controlled substance
40 proscribed by title 13, chapter 34 or fails to pass, refuses to cooperate
41 with or refuses to take an alcohol impairment test that is administered by
42 or at the request of the employer not more than twenty-four hours after the
43 employer receives actual notice of the injury, unless the employee proves any
44 of the following:

1 1. The employee's use of alcohol or the employee's use of any unlawful
2 substance proscribed by title 13, chapter 34 was not a contributing cause of
3 the employee's injury or death.

4 2. The alcohol impairment test indicates that the employee's alcohol
5 concentration was lower than the alcohol concentration that would constitute
6 a violation of section 28-1381, subsection A and would not create a
7 presumption that the employee was under the influence of intoxicating liquor
8 pursuant to section 28-1381, subsection G.

9 3. The drug test or alcohol impairment test used cutoff levels for the
10 presence of alcohol, drugs or metabolites that were lower than the cutoff
11 levels prescribed at the time of the testing for transportation workplace
12 drug and alcohol testing programs under 49 Code of Federal Regulations part
13 40.

14 E. Subsection D of this section does not apply if the employer had
15 actual knowledge of and permitted or condoned the employee's use of alcohol
16 or the employee's unlawful use of any controlled substance proscribed by
17 title 13, chapter 34.

18 F. An employer that establishes a policy of drug testing or alcohol
19 impairment testing in accordance with chapter 2, article 14 of this title
20 shall file a written certification to that effect with the industrial
21 commission. ~~On or before January 15 of each year, an employer that has~~
22 ~~previously established a policy of drug testing or alcohol impairment testing~~
23 ~~and is maintaining that policy shall both file a written certification to~~
24 ~~that effect with the industrial commission and provide notification to its~~
25 ~~employees in a manner consistent with section 23-493.04, subsection A that~~
26 ~~the employer is maintaining that policy.~~

27 G. Nothing contained in this section shall be construed to enhance or
28 expand the reporting requirements prescribed in section 23-908, subsection D.

29 H. For THE purposes of this section:

30 1. "Refuses to cooperate" means that the employee engages in any act
31 or omission that impedes the ability of the employer, the insurance carrier
32 or the agents of the employer or insurance carrier to obtain an accurate
33 result on a drug test or an alcohol impairment test.

34 2. "Substantial contributing cause" means anything more than a slight
35 contributing cause.

THIS BILL HAVING REMAINED WITH THE GOVERNOR FIVE DAYS, SUNDAYS
EXCLUDED, AND THE LEGISLATURE BEING IN SESSION, IT HAS BECOME
A LAW THIS 12 DAY OF MAY, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2003.

Passed the House March 4, 2003

Passed the Senate April 30, 2003

by the following vote: 41 Ayes,

by the following vote: 29 Ayes,

19 Nays, 0 Not Voting

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Ken Bennett
President of the Senate

Norman L. Fyfe
Chief Clerk of the House

Chaimin Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2306

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 6, 2003,

by the following vote: 41 Ayes,

15 Nays, 4 Not Voting

Mike I. Lake
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2003,

at 12:06 o'clock P. M.

Sandra Ramirez
Secretary to the Governor

Approved this _____ day of

_____, 20____.

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of May, 2003,

at 4:35 o'clock P. M.

Janice L. Brown
Secretary of State

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